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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 471, 473

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE and VAL J. WASHINGTON, Commissioners of the Illinois Commerce Commission, and DANIEL F. RICE & COMPANY, a Partnership,

Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF OF PETITIONERS, DANIEL F. RICE & CO., A PARTNERSHIP

IRVIN ROOKS,
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Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice, and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership,

Petitioners.

February 12, 1947.

LINCOLN PRINTING COMPANY, CHICAGO—WABASH 4204.

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The respondent, the Board of Trade, in its brief filed with this Court, has not answered the arguments or position set out in our original brief. Our discussion there, we submit, is conclusive on the issues presented in this cause, and therefore we believe it unnecessary to reply in detail to the many inapplicable arguments made and issues raised in the

brief of the Board of Trade. The federal government, in its brief *amicus curiae,* has conceded its inability to urge at this time "that any conflict or interference or overlapping necessarily would result" from the Illinois Commission's supervision of rules of the Board of Trade relating to warehousing. (Govt. Br. 14)

The Board of Trade apparently is now urging that the Commodity Exchange Act relates to all phases of futures trading, and since proper warehousing and the use of warehouse receipts to satisfy delivery on futures contracts has an influence upon futures trading, therefore the Commodity Exchange Act also encompasses control over Board of Trade rules and regulations dealing with such warehouses. In so arguing, counsel have distorted the terms and intent of the Commodity Exchange Act, and have presented an illogical and erroneous argument. By the same token, adequate transportation and communication facilities are essential to the conduct of the futures market, yet no one would seriously urge that state regulation over telephone services, local railroad rates or local motor carrier service has been superseded by the Commodity Exchange Act. Counsel, in effect, however, have abandoned even this position by conceding that orders of the Illinois Commission which affect warehousemen would be controlling as against Board of Trade rules dealing with their qualifications for "regularity". They say (Resp. Br. 33):

> "Furthermore, any order validly entered by the Commission against the warehousemen will be valid and binding upon the warehousemen and the public notwithstanding any rules or regulations of the Board of Trade with respect to 'regularity.' If the Commission enters a valid order against the state elevators which disenables them from meeting the Board of Trade's conditions of regularity, such state elevators would automatically be disqualified from regularity."

In this brief, we merely wish to point out some of the substantial errors in statement that have been made by the Board of Trade.

1. Respondent urges that specific maximum warehouse storage charges are specified in its Regulation 1620, to insure substantial uniformity in the rates charged by federal and state houses, and should the state fix a storage rate different from that contained in Regulation 1620, the state warehouse would automatically become not regular. (Resp. Br. 6)

Regulation 1620 merely specifies that storage rates shall not exceed 1¼¢ per bushel for the first ten days, including elevation charges, and 1/20¢ per bushel for each additional day. (R. 155) The establishment of a maximum limit does not insure uniformity below that limit. The state might reduce rates below the limit indicated, and no violation of the regulation would occur. In fact, at present storage rates are 1/25¢ per bushel per day for each additional day after the first ten days, or approximately 20% below the maximum fixed. (R. 13)

2. Respondent argues that Rice "in this Court for the first time" urges that the Illinois Commission has an area of jurisdiction beyond what is covered by the Commodity Exchange Act by contending the Commission has authority to approve or disapprove rules relating to *private* warehouses. (Resp. Br. 7, 31-2, 34)

The complaint before the Illinois Commission specifically refers to rules and regulations of the Board of Trade relating to the "custody of grain in private warehouses", over which Commission jurisdiction was invoked. (R. 12-3, 18-9) Rice argued that question before the Illinois Commission, in the District Court and in the Circuit Court of Appeals.[1]

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[1]Rice brief before the Illinois Commission, p. 41; in the District Court, p. 30; in the Circuit Court of Appeals, pp. 31-2.

3. The argument is made that the Illinois Commission has "stretched the language of Section 194b to enable itself to veto ordinances of the Board of Trade which relate to the 'regularity' of warehouses * * *." (Resp. Br. 8)

The Illinois Commission has made no interpretation and has issued no opinion. It merely denied the Board of Trade's motion to dismiss, which motion claimed that the Illinois Commission had no authority whatever over Board of Trade rules relating to warehousing and custody of grain.

As a corollary to this argument, the Board of Trade argues (Resp. Br. 35):

> "By refusing to dismiss the Board of Trade the Commission indicates that it claims authority to issue directives based on its erroneous construction of Section 194b—a construction, however, which is binding on the federal judiciary."

We had been under the impression that the rule of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938), provides that the construction of state statutes made by the court of last resort in a particular state will be considered binding on the federal judiciary. The Illinois Commission has not attained that exalted position.

4. Respondent states that Section 5(a) of the Commodity Exchange Act imposes a condition upon contract markets that there must be "sufficient warehousing facilities" to warrant the maintenance of futures trading. (Resp. Br. 10)

The section contains no such requirement.

5. The case of *Albers* v. *Lamson*, 380 Ill. 35, 42 N. E. (2d) 627 (1942), is cited as holding that the Commodity Exchange Act superseded any attempted state interference with the validity of futures contracts. (Resp. Br. 29)

No question of the supersedure of state law by the Commodity Exchange Act was involved. The only reference made to the Commodity Exchange Act was in connection with a discussion of whether or not futures trading violated the state public policy against gambling.

It is respectfully submitted that respondent has completely failed to demonstrate, by an analysis of the provisions and purpose of the Commodity Exchange Act, that the invoked state authority under Section 194b of the Illinois Grain Warehouse Act is in conflict with the federal statute, or involves a precise subject matter of regulation over which Congress has exercised its power. It is conceded even by respondent that the state commission has some power over the rules and regulations of the Board of Trade.

Respectfully submitted,

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